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EXTRAORDINARY

PART II—Section 3

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No. 106]

NEW DELHI, MONDAY, MAY 4, 1953

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 29th April 1953

S. E. O. 830.—WHEREAS the election of Sardar Dara Singh, as a member of the Legislative Assembly of the State of Patiala and East Punjab States Union (now dissolved) from the Bhadson Constituency of that Assembly has been called in question by two election petitions duly presented under Part VI of the Representation of the People Act, 1951 by Shri Mathra Das, son of Shri Banta Mal, Advocate, High Court, Patiala, Patiala and East Punjab States Union, Village Amloh, Tehsil Amloh, District Fatehgarh Sahib, Shri Inder Singh, son of Shri Mehtab Singh Biswedat, Village Nanoke, Tehsil Nabha, Thana Bhadson, District Patiala, Shri Fateh Singh, son of Shri Kahan Singh Biswedat, Village Jatiwal, Tehsil Nabha, Thana Bhadson, District Patiala and by Sardar Shiv Dev Singh son of Sardar Partap Singh, Ward No. 3, Nabha City, District Patiala ;

AND WHEREAS the Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act for the trial of the said petitions has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order in the Election Petition filed by Sardar Shiv Dev Singh to the Election Commission ;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order.

BEFORE THE ELECTION TRIBUNAL, PATIALA

V. B. Sarwate—*Chairman.*

Raghunandan Saran—*Member.*

E. M. Joshi—*Member.*

ELECTION PETITION NO. 90 OF 1952

Sardar Shivdev Singh, s/o Sardar Partap Singh, Ward No. 3, Nabha City, District Patiala.—*Petitioner.*

Versus

1. Sardar Dara Singh (the returned candidate), s/o Sardar Bishan Singh of village Salana Jiwan Singh Wala, Advocate, High Court, Patiala.
2. Lala Hans Raj, s/o Lala Anand Ram Mahajan Agarwal of village Amloh, District Fatehgarh Sahib.
3. Shri Mathra Das, s/o Shri Banta Mal, Advocate, High Court, Patiala, PEPSU, resident Village Amloh, Tehsil Amloh, District Fatehgarh Sahib—*Respondents.*

ORDER DELIVERED ON 25TH APRIL, 1953

The petitioner S. Shivdev Singh and the Respondent No. 1 S. Dara Singh contested the election to the PEPSU Legislative Assembly from the Bhadson Constituency and the Respondent No. 1 was declared returned. The Respondents Nos. 2 and 3 Lala Hans Raj and Shri Mathra Dass, also filed nomination papers in this election but their nominations were rejected by the Returning Officer at the time of scrutiny and so they were not in the contest. The petitioner seeks to avoid the election on a number of grounds alleged in paragraphs Nos. 3 to 9 of the petition. These consist of allegations about several corrupt practices on the part of the Respondent No. 1 and his agents such as undue influence on voters, publication of false and defamatory statements, procuring of vehicles for the conveyance of electors to and from the polling stations, obtaining assistance from Government Servants, systematic appeal to vote on grounds of Sikh religion along with the use of and appeal to the Sikh religious symbol and the making of the return of election expenses which is false in material particulars. The prayer in the petition is that the election of the respondent No. 1 be declared void.

2. The Respondents Nos. 2 and 3 did not appear to contest the petition. The Respondent No. 3 had filed an election petition himself seeking to avoid the election on the ground of the improper rejection of his own nomination by the Returning Officer. This was election petition No. 70 of 1952 which was tried separately and has since been allowed. The respondent No. 3 denied and controverted all the allegations of the petitioner and has vehemently opposed this petition. The petitioner mainly relied on the false and defamatory statements published by means of four posters (Exs. P-1 to P-4). The publication of these posters is admitted on behalf of the respondent. About the poster P-1 while its publication in the interest of Respondent No. 1 is admitted, it is added that it was published by the Akali Jatha of Bhadson Circle and the costs of its publication were paid by the Respondent No. 1 after the election was over. About the posters Exs. P-2, P-3 and P-4 also it is admitted that they were published in support of the Respondent No. 1 by the persons or bodies whose names are printed in them and that the expenses of printing them were paid by the Respondent, the payment, however, being said to have been made after the election was over. The publication of these posters in the constituency is not disputed but it is not admitted that they were published at the several places or on the dates stated by the petitioner.

3. The following were the issues framed for trial :—

Issues :

1. (a) Were the statements P-1 to P-4 in list 1 (A) which were issued on behalf of Respondent No. 1 and in his support, published as alleged by the petitioner ?
- (b) Was the publication by Respondent No. 1 and or his Agents as alleged in para. 3 and list 1 (b) ?
- (c) Were these statements false and does their publication as alleged in para. 3 of the petition constitute a corrupt practice within the meaning of Section 123 (5) of Representation of People Act, 1951 ?
2. Does petitioner prove that the Respondent No. 1 and his agents commit the corrupt practice of exercising undue influence by their acts and statements as alleged in paras. 4 and 5 and list 2 of the petition ?
3. (a) Did Respondent No. 1 obtain assistance for his election from Government servants as alleged in para. 6 and list 3 of the petition ?
- (b) If so, does this constitute corrupt practice within the meaning of Section 123(8) of the Act ?
4. (a) Did Respondent No. 1 convey his electors to and from the polling booths by lorries Nos. P. U. 1502, P.U. 1477, P. U. 1499 and P.N.J. 1766 as alleged in para. 7 and list 4 of the petition ?
- (b) If so, does this constitute corrupt practice within the meaning of Sec. 123 (6) of the Representation of People Act, 1951 ?
5. Does petitioner prove that Respondent No. 1 and his agents made an appeal to voters in the manner and with the purpose as alleged in para. 8 and list 5 of the petition ?
6. Was the election of Respondent No. 1 procured or was the result of the election materially affected by any corrupt practice ?
7. (a) Did Respondent No. 1 make a return of election expenses which was false in material particulars as alleged in para. 9 and list 6 of the petition ?
- (b) Did the respondent No. 1 fail to keep regular accounts of his election expenses as required by law ?
- (c) Is there sufficient ground made out for disqualification of Respondent No. 1 under Section 140 ?
8. What is the appropriate order to be made under Sections 98 and 99 of Representation of People Act, 1951 in this case ?

4. Some objections besides those incorporated in the above issues had been taken on behalf of the respondent No. 1 which were considered and disposed of as preliminary issues. These raised questions of adequacy of the particulars relating to the corrupt practices as given in the petition. One issue—preliminary issue No. 2 was relating to the allegations made on behalf of the respondent that the petitioner's return of election expenses was not correct in some particulars. These preliminary issues were disposed of by an order delivered by us on 18th December, 1952. In the annexure A to this order we reproduce the preliminary issue No. 11 and our finding on the same as contained in the order dated 18th December, 1952.

5. A mass of evidence has been adduced on both sides for proof and disproof of the issues reproduced in para. 3 above but in view of certain happenings to which we may now refer and their reactions as they appear to us on the scope of the controversy in this petition, we do not think that for adequate disposal of the petition we need dwell upon more than a few matters. The object of the petitioner in making this petition was to have the election of respondent No. 1 declared void on the ground that the respondent No. 1 had been able to steel a march over him by resort to a number of corrupt practices which helped him to influence the voters in his favour. The relief claimed by him was a declaration of the election of the returned candidate being void. Incidentally this relief having had to be given upon a finding of the commission of corrupt practices, such finding would attract the operation of Section 99 of the Representation of the People Act, 1951. According to that section at the time of making an order under Section 98 the tribunal in a case like the present where a charge of corrupt illegal practices has been made is to make a further order recording a finding about commission of the corrupt or illegal practices by or with the connivance of the candidate or his election agent. The effect of such finding being to disqualify the candidate or the agent concerned under S. 140 of the Act. Other persons guilty of Commission of such corrupt or illegal practices could also be determined and named under Clause (ii) of S. 99 (a) for purpose of disqualification under S. 141 to 143 of the Act, but before this is done the tribunal has to give notice to those persons and to allow them an opportunity to be heard, to cross examine the petitioner's witnesses and to adduce their evidence. All this procedure may require the trial to be protracted for another couple of months after this even though the inquiry between the petitioner and the candidate has now been concluded.

6. On 5th March 1953 we delivered order in election petition No. 70 of 1952 declaring this election to be wholly void because of the improper rejection of Mathra Dass's nomination. As it happened on the same day the President's Proclamation under Art. 356 of the Constitution was promulgated dissolving the present PEPSU Legislative Assembly and ordering the Assembly to be constituted again after a fresh election. The effect of this was also to make this seat of the Bhadsar constituency vacant for re-election. The main object with which the petitioner S. Shivdev Singh made this election petition was thus doubly achieved without the necessity of determination of the numerous allegations of corrupt practices herein made. The trial of this petition was however allowed to be continued because in our view by the combined operation of Sections 98 and 99 of the R. P. A. 1951 the order the tribunal had to make upon a petition grounded on corrupt practices, as this is, was not only whether the declaration about the election being void should or should not be made but also one of recording a finding whether any corrupt practice was proved or not. Through our own decision in the other petition and through the President's Proclamation the necessity for making a declaration of the election being void did not remain but still the petitioner could insist that a finding about corrupt practices used in the election should be given which would help him to vindicate his stand that he lost in the election to the respondent No. 1 due to the resort by the latter to corrupt or illegal practices and that the election would have been liable to be set aside even if there had not existed a technical flaw like improper rejection of a nomination or there had not been the supervention by the President's Proclamation. This right of the petitioner was implicit in his making the petition grounded upon corrupt practices as the law permitted him to do and he has the right to have an adjudication of the petition to the extent necessary to secure him the reliefs for which he made it. By what has already taken place, he has not secured a finding about commission of unfair practices—the proof of which would not only vindicate his honour but would further give him the satisfaction of seeing his opponent in the election disqualified under S. 140 of the Act and so getting rid of his opposition in the next election. We do not think that he can insist upon our doing more than this “for him and this much can be achieved by him if we can be induced to find one corrupt practice proved as may be sufficient for disqualification under S. 140. There is in our view, no point” in his insisting that we should record our findings about the whole bundle of unfair practices as alleged by him the cumulative effect of which may have been necessary to be considered to see if the election had to be declared void as being materially affected by such practices. The findings about all the practices would now advance the cause of the petitioner further only by roping in persons other than respondent No. 1 or his election agent in order that they may be disqualified under Sections 141 to 143. It may be that the petitioner looked forward to this also when he made the petition since he had mentioned the names of a number of persons as being connected with the unfair practices. But as we have said in order to see if any of those other persons are liable to be penalised, we will have to continue the inquiry further when that does not so much help the petitioner to vindicate his honour in the election and would only make him appear vindictive. We think it is discretionary with us to say if we would take action under Clause (ii) of

S. 99 (1) and since the findings on all corrupt practices are not now necessary for any other purpose except the naming of some persons under that clause for which again we have to enter upon further inquiries which may take much time still, we do not feel justified in pursuing the matter only for such purpose and when we do not propose to take action under that clause, we need not record findings on the issues raised in this case except to the extent necessary for taking action under clause (i) of the Section coupled with S. 140.

7. We have, however, been pressed by a petition to find that in view of the dissolution of the Assembly by the Proclamation of the President under Art. 356 of the Constitution the election petition has been rendered entirely infructuous and so liable to dismissal without inquiry into any of the grounds made by the petitioner. We have, therefore, to consider if the petition is liable to be dismissed as being untenable by reason of the dissolution of the Assembly or if it survived that dissolution for purposes of inquiries into commission of corrupt practices for which the trial was continued in this case even after the Proclamation.

8. An Election Petition according to S. 81 of the R. P. A. 1951 can be made on the grounds specified in sub-sections (1) and (2) of S. 100 which would be (a) on grounds of bribery, coercion or intimidation or improper acceptance or rejection of a nomination making the election wholly void or (b) on grounds of corrupt or illegal practices committed by or on behalf of the returned candidate which will make the election of the returned candidate void, (c) it may also be made on grounds specified in S. 101 that another candidate may be declared to be elected in place of the returned candidate. The present petition is in the clause (b) above. When under S. 86 the Election Commission referred the petition to the Election Tribunal for trial, the Election Tribunal become seized of the entire responsibility of giving decision on all matters on which it is authorised to make orders under the provisions of the R. P. Act. That is a statutory obligation on the tribunal which the tribunal is bound to perform unless it can be shown that the determination of any matter has been rendered unnecessary or the tribunal's power to deal with it is abrogated. By sections 98 and 99 of the Act the tribunal is not only to see if any of the reliefs as may be appropriate according to S. 100 or 101 should be granted or not but where commission of a corrupt practice is alleged, it may in the process of determination of the order to be made under S. 98, also record a finding if commission of the corrupt practice is proved and if any persons in consequence should be disqualified under Sections 140 to 143 (*vide* S. 99).

9. To what extent is then the power of the tribunal abrogated or curtailed by reason of the dissolution of the Assembly under the President's Proclamation. The Election Tribunal has its existence by virtue of the provision in Art. 329 of the Constitution. The President's Proclamation while suspending the operation of certain articles of the Constitution in PEPSU has not included Art. 329 in them and thus the Election Tribunal are left free to function as may be necessary to deal with the petitions referred to them. The question therefore is narrowed down to this. If determination of any point becomes unnecessary because the relief to be given by such determination has become available to the petitioner by reason of the dissolution, the inquiry to that extent may be considered to be redundant; but it may not be abandoned for determination of other matters, the relief available from which is not to be had by the fact of dissolution. It may be possible to say that since the dissolution of the Assembly with an order for holding fresh elections, has avoided the election and left the seat open, the necessity for making a declaration that the election is void in respect of the seat to which the election petition relates, is gone. This, however, does not take away the need for recording the finding under S. 99 about commission of corrupt practice. Even as to the first matter it may be doubted if the necessity for declaring the election to be void is gone irrevocably. The Proclamation itself is revocable under clause (2) of Article 356 and is subject to the approval of the Parliament under clause (3) of the same. The dissolution is not therefore irrevocable until fresh elections have taken place and if before such fresh elections, the Proclamation has to be withdrawn under one of the provisions above referred to, the effect would be the revival of the Assembly and with it the necessity of considering if the election to the particular seat is to be avoided on the grounds of the election petition. Thus even to that limited extent the dismissal of the petition for the relief of the avoidance of the election may not be ordered irrevocably.

10. If the returned candidate voluntarily resigns the seat, the seat is rendered vacant and we may think available for re-election irrevocably since the resignation cannot be withdrawn after it is accepted. In such case it is understandable that the election Tribunal can dismiss the petition as having become infructuous and the dismissal may completely put an end to the proceedings if the petition is one falling under category (a) in para. 8 above, but if it is in category (b) then evidently the proceedings should continue for finding about commission of the corrupt practice because the returned candidate may have resigned finding that he had no defence against the charge of corrupt practice and for avoiding if possible the disqualification entailing upon its proof. Would the Election Tribunal in the latter case allow him to escape the disqualification by dismissing the petition outright on the seat being rendered vacant due to resignation? So also where the petition is in category (c), the proceedings must continue after resignation of the returned candidate to see if the candidate for whom the seat is claimed can be allowed to go into it. For like reasons it would seem a petition is not always treated as abated by death of the respondent but is allowed to continue after substitution under Section 116 of the Representation of the People Act.

11. The respondent relied upon the order of the Himachal Pradesh Election Tribunal in *Shri Khsota V. Shri Dharam Singh* (Gazette of India Extraordinary dated 29th October, 1952) in which the Tribunal dismissed the petition as infructuous following the acceptance of resignation of the seat by the returned candidate Dharam Dass. From the report of the case it is not clear if it was a petition grounded on commission of corrupt practices and if the petitioner insisted upon inquiry into the corrupt practices for disqualification of any person or not. The order is not thus helpful for determination of the point raised here namely that the petition becomes infructuous by reason of the dissolution of the Assembly under the President's Proclamation. The Representation of the People Act, 1951 and the Civil Procedure Code which regulate the procedure of the Tribunal in the trial of the election petition do not provide for dismissal of the petition on the dissolution of the Assembly and as we have seen the necessity for determination of some matters agitated by the petitioner can still survive the dissolution which in itself is not irrevocable. In *Nurul Islam V. Mohammad Rafique* the decision which is published in the Gazette of India Extraordinary dated 4th December, 1952 the Election Tribunal was dealing with an election petition under category (c) in para. 8 above and it was held that the claim of the petitioner in the election petition was left unaffected by the resignation of the seat by the returned candidate. If resignation of seat has any analogy to its falling vacant because of dissolution of the Assembly this decision will mean that the petition can survive for determination of other matters as may still be necessary to be determined after the necessity for declaration of the election as void has ended.

12. The Counsel for the respondent referred us to two English decisions both reported in *L. R. Common Pleas Cases Vol. 9 Election Cases Carter V. Mills* at P. 117 and the *Tannton Case Marshall Vs. James* at P. 702. In those cases the effect of the dissolution of Parliament by royal proclamation upon the election petitions had to be considered. In the first case the Election Petition had not come up for trial when the Parliament was dissolved and the petitioner stating that the trial of the petition having become unnecessary, the deposit made by him by way of security for costs should be returned to him. The Judges found that in the Parliament Election Act (which applied at the time of the trial of election petitions) did not provide for the case of a dissolution but they thought that they might guide their proceedings by the old parliamentary practice. The practice they stated was that the petition abated or dropped in such a case. They also realized that the deposit was made by way of security for costs but the respondent not having incurred any costs since the trial had not commenced no question of holding the deposit for payment of his costs could arise. The respondent also consented to the application for return of deposit. The Judges accordingly treated the petition as dropped and ordered the return of deposit.

13. In the second case the election petition had been tried to the conclusion and order for payment of the respondents costs by the petitioner had been passed and immediately after that but before that order could be communicated to the Speaker, the proclamation of dissolution was made. The Judges who were the same as in the *Exeter* case found that though it could be that the petition dropped by reason of dissolution as they had stated in the previous case, that could not take away the respondent's right to have his costs since that right had become vested in him by the Court's order before the dissolution and the vesting was not affected by the fact that the order had not been received by the Speaker until after the dissolution. This second case does not therefore directly decide what the effect of dissolution should be on the election petition but the Judges thought that even if it was to be assumed that the petition should abate as they had found in the previous case, their order about costs in this case would still remain enforceable. They also stated that their view in the previous case about dropping of election petitions consequent upon a dissolution was based upon the practice of the Committees of the Parliament to whom election petitions used to be referred formerly. They further pointed out that the order in the previous case might be referable to the provision for withdrawal of the petition by consent of the court which was there in the Parliament Election Act.

14. We think that these decisions are not applicable to this case and cannot also give any guidance for adopting the same view here. The old parliamentary practice on which the order of dropping off could be made in England cannot be availed of here as our procedure is governed by the Representation of the People Act and the Civil Procedure Code. We also think that the dissolution of the Parliament in those cases was perhaps irrevocable, so that it was not necessary to consider the possibility of the petition reviving upon a revocation. The withdrawal of petition under the provision in the Representation of the People Act even with the consent of the tribunal cannot always terminate the proceedings because they might be continued by another person under S. 110(3)(c) of the Act. In the *Exeter* Case the petitioner brought the petition and as the trial had not commenced the respondent had not any reason to oppose an order of abatement. Before us the petitioner but on the other hand insists upon an adjudication. It would also be if in this case we treat the petition as infructuous and allow it to drop disqualification when other petitions arising out of the same general reasons we find that this Election Petition did not abate by reason PEPSU Assembly.

15. For the limited purpose as indicated in para. 6 above, we think a finding about the alleged corrupt practice by publication of the four posters Exs. P-1 to P-4 as we have particularised in para. 2 would suffice and we proceed to discuss the same.

16. To understand precisely the purpose and meaning of these four posters, it is perhaps relevant to know the background of this election in Bhadson constituency. The petitioner and the respondent No. 1 were the only two candidates left in the contest after the Returning Officer had rejected the nomination papers of the other two candidates. Mathra Dass wanted to be in the contest in the hope that he would be adopted by the congress party and being a Hindu his candidature may have appealed to non Sikh voters. He was, however, out of the picture when his nomination was rejected. S. Dara Singh and S. Shivdev Singh both Sikhs were aspirants for the Akali Party ticket but the Party's Election Board decided to adopt S. Dara Singh. The reason for this decision of the Board may have been that S. Dara Singh not being a landlord or a rich man was more likely to act up to the party's programme which included abolition of Zamindari amongst the party's objective, than S. Shivdev Singh who was himself a big landlord and a man of wealth. S. Shivdev Singh's trump cards appear to have been these and the influence he would wield with the electorate by reason of he and his ancestors having held the office of Prime Minister in the erstwhile Nabha State of which a large area of this constituency had been a part. Though Shivdev Singh when applying for the ticket had signed a pledge to the Akali Party that he would not contest the election in opposition to any other candidate who may be set up by the party, he ignored it and decided to remain in the contest evidently banking upon a good support from the electorate as a man of property, position and influence. This naturally gave imbrago to the Akali Party. Local Leaders of the other recognised parties in the election like the Communist and the Scheduled Caste having no candidate of their own made common cause to support the Akali Party candidate and even some congress men like Manohar Singh, R. W. 25 and Kartar Singh R. W. 26 became Dara Singh's ardent supporters and these two even acted as polling agents of Dara Singh. The Akali Party, as S. Dara Singh himself tells us is generally regarded as a Communal organisation of the Sikhs because its membership is open only to men professing Sikh Religion. Shivdev Singh though himself a good Sikh, having been abjured by the Akali Party could not count much upon the support of his community. He chose to enter the arena as an independent candidate apparently calculating that even if Sikhs generally would not support him because of the Akali Party in opposition, he could hope for support from non Sikh communities like Hindus and the Harijans. The form of propaganda which therefore is said to have been adopted by S. Dara Singh and the Akali Party supporting him was not only to say that Sikhs should not support Shivdev Singh because he was not a nominee of the Akali Party but to wean him away from all communities by decrying landlordism generally and representing him as a worst type of landlord, oppressive and tyrannical, a man of immoral character, anti-national in outlook and no friend of Hindus or Harijans either, since as a Sikh he had the communal bias against them. According to Shivdev Singh in the posters Exs. P-1, P-2, P-3 and P-4 very damaging statements on such points against his personal character all false to the knowledge of the publishers of these had been made with the purpose of marring his prospects in the election and these were extensively circulated in the constituency and this amounted to a corrupt practice under Section 125 (5) of the R. P. Act.

17. Soon as the nominations were finalised, the two contestants appear to have started a vigorous election campaign—Shivdev Singh himself and Dara Singh supported by the various groups as above stated. Shivdev Singh by a poster Ex. R-2 which was in the nature of his election manifesto, put his rather tall programme before the electorate hinting that nothing like that was to be expected from the Akali candidate. To counteract it, Gurcharan Singh Torah as head of the Akali Dal of Bhadson Circle delivered in Shivdev Singh a questionnaire suggesting that his programme as set out in Ex. R-2 was illusive and intended to hoodwink the electorate. Shivdev Singh was called upon to make a reply to these questions and Shivdev Singh brought out a pamphlet Ex. R-1 containing the answers. The questions were posed not for getting satisfaction but merely by way of belittling the programme which S. Shivdev Singh sought to put before the electorate in Ex. R-2. Shivdev Singh in his evidence as P. W. 82 has explained that the paper given to him contained only the first 22 questions as printed in the poster Ex. P-1 and these were replied to on 24th December, 1951 but still the poster Ex. P-1 was brought out reproducing the very same questions and with additional five—thus containing in all 27 questions. This statement of Shivdev Singh has not been sought to be disproved by the respondent No. 1 and would seem to be corroborated by the note printed in Ex. P-1 after the first 21 questions "if you will not reply to all the questions mentioned above then we will conclude that our questions are all quite correct".

S. Dara Singh in his evidence admits the position that Ex. P-1 was issued after Shivdev Singh had replied in Ex. R-1 to the questionnaire which Gurcharan Singh Torah had delivered in manuscript. The additional questions are not related to any matter contained in Ex. R-2 which could be said to have provoked the putting of them. Shivdev Singh takes exception to the questions Nos. 21, 24, 25 and 26 in the poster Ex. P-1 which are reproduced below :—

Question No.

21. Is it correct that you are trying to distribute cycles and blankets in this constituency ? Is such an action according to law ? Will not these cycles and blankets be taken back

after the elections are over ? We want to tell you that we have got full proof of the distribution of cycles and blankets ?

24. Patriot Maharaja Ripudaman Singh was deported by the British on account of his being the servant of the nation ; did not you have a hand in this matter (i.e., in sending him into exile) ?
25. Did you not have a hand in the atrocities committed at Jaitu Morcha during the Akali Lahar (agitation) days ?
26. You and your workers have been declaring that if the Akalis win this election, then there will come into existence a Bhakra line as Wagha Line came into existence in 1947 disturbances. How far is it true ? If it is true then in case you had got an Akali ticket would the conditions have remained the same or would they have changed ?

18. There is no doubt that these questions were posed with the purpose of making it known that the statements contained therein are true and should be accepted by the readers. This was implicit in printing them for circulation and this has been made clear by the note above reproduced which was printed as part of the same. The statements were put in the form of questions only to make them more emphatic and convincing to the minds of the readers. It cannot be gainsaid that every one of the objected question conveys a serious imputation against the personal character of the petitioner in relation to his candidature at the election.

19. The other three posters are similar in character. Ex. P-4 entitled 'Appeal to the Poor Kisan Janata' issued over the name of Gurcharan Singh Torah is addressed to 'Poor Kisans labourers, Hindus and Sikh brethren'. It starts with describing Shivdev Singh as 'landlord and Jagirdar'. There is a whole paragraph devoted to describing the tyrannies of the landlords and Jagirdars generally over their tenantry. In this there is also the following statement :

"They not only thrive on the fruits of labour of these poor kisans but they and their mukhtars further commit all kinds of excesses upon and disgrace their women folk".

The petitioner has taken objection to the above statement also as a reflection on his personal character. This in our view is not and could not have been understood as a statement relating to S. Shivdev Singh personally. It is evidently a statement regarding the general character of the landlord class like other statements in that paragraph and it cannot be treated to have reference to Shivdev Singh personally only because at the head of the poster Shivdev Singh has been described as a Jagirdar and Biswadar. The purpose of that paragraph was to dissuade voters in voting for a candidate belonging to Jagirdar class by recalling to their minds the evil doings usually associated with the people in that class.

20. The second part of this poster entitled "Introduction of S. Shivdev Singh" also makes it clear that the statements in the first part were not intended to refer to him personally. The 9 items of this introduction which are reproduced below are undoubtedly referring to Shivdev Singh and would be a reflection on his personal character in relation to his candidature :—

1. He used his best and strenuous efforts in turning out of his state Maharaja Ripudaman Singh in collaboration with the British.
2. He is very big landlord and owns many villages. In his villages excesses of various kinds are perpetrated on the tenants. A detailed account of these atrocities will be explained later on.
3. His family has been holding the office of the Prime Ministership for the last three generations. These villages were acquired during their tenure of office by taking forcible possession of the lands of the poor agriculturists.
4. During his tenure as a Prime Minister he enacted a law according to which the Shisham trees belonging to the poor agriculturists were declared government property.
5. He tried to finish Maharaja Partap Singh.
6. During his tenure as Prime Minister he ordered that iron rings be put on the necks of cattle belonging to the public. This caused the death of many cattle by hanging.
7. The Nabha Government had sanctioned taccavi loan for the Zamindar his share in the taccavi was for 25 wells. He caused the whole taccavi to be distributed among his relatives. Perhaps no agriculturist got a share of the taccavi. More in this connection will be told if need arises.
8. This is Sardar Shivdev Singh who is presenting himself for service of the public. Dear brethren, this is the time to be on the alert. One who can betray his master's salt cannot be expected to do any good to us.
9. We appeal to the poor public that they should be very careful at this time because the schools constructed today and liquor and sum of 5 or 10 rupees taken from him will make them slaves for the next five years.

21. These are no doubt statements about his alleged doings while holding the position of the Minister of the erstwhile Nabha State but they intended to depict him as faithless servant, a traitor, a dishonest and selfish man and an oppressor of the poor. All these matters are reflections on the personal character of the man and intended to show him as an entirely unfit person to be a representative of the people in the legislature. They were therefore made in relation to his candidature though they speak of his doings while in the position of Minister. They are not shown to be acts done in the performance of his duty of administering and carrying on the State Government. They cannot therefore be treated as a mere criticism of his administration as Minister of Nabha State, there being also no occasion at the time for any *bona fide* criticism of him as a public servant. In the last paragraph of this poster there is a repetition of the statement found in Ex. P-1 that Shivdev Singh has distributed cycles and blankets in the constituency for catching votes. There is in addition a charge levelled that he was distributing wine and cash also for securing votes.

22. Ex. P-3 which is addressed to 'Poor Village People of Pargana (Constituency) Bhadson' was an invitation to all people to attend a conference at village Laut on 2nd January, 1952. This purports to be issued by the President of the Reception Committee of the conference. Who this person is, has not been disclosed by the respondent Dara Singh. The poster mentions at the top that the conference consulted about being President and had agreed and he did in fact preside. The conference it is said was being convened to expose Shivdev Singh and his Jagirdari Clique in their real (naked) form. In the statements which follow thereon the following passage appears to which objection is taken :—

"This gang of human wolves is preaching communalism having transgressed all moral principles. They are doing so for the sake of using them for their own evil purposes by separating the two communities so that our poor people may remain under the sway of the same rapacious cow killers whose landlord like aggressions are still fresh in the minds of the poor Hindus, menials, Sikh tenants and Harijans of Bhadson Constituency. It will be fully explained in the conference to what extent Sardar Shivdev Singh is pro-Hindu or pro-Sikh.

Why he, who is a half-mad Jagirdar and who in the days of his Prime Ministership had confiscated hundreds of bighas of land of dozens of villages and had declared poor Hindus as Non-agriculturists, has suddenly got feelings of sympathy and compassion for the poor Hindus and Sikhs".

23. Ex. P.-2 is a poster issued over the names of four persons Bhagwan Dass Gill, Secretary, Achut Federation, Kaka Ram Vaid, Jagat Nath and Hans Raj Panda all these subscribing themselves as well-wishers of Hindu Janta. It is entitled "Hindu brethren, beware" and according to its title the statements in it are intended to convey that Shivdev Singh is antagonistic to Hindu interests and oppressed them and the Harijans in various ways. It closes with an appeal that Hindus should remove the mis-conception from their minds about Shivdev Singh being their friend and S. Dara Singh should be regarded by all the Hindus as their sympathiser. The passages objected to in this poster read as follows :—

1. Sardar Shivdev Singh through his agents is giving currency to baseless rumours in Pargana Bhadson.
2. So far as his connection with the Hindus is concerned, we know it that at the time when there was a race for securing an Akali ticket, he overawed the Hindu Public through his hired (whom he purchased for money) men. He gave cowardly threats to drive away the Hindus beyond Delhi—Hindus or those heads are shaved. He gave cowardly threats to the poor and the untouchables at the time of Census in our circle and he incited the Jats and Sikhs to get after them (i.e., to get after their lives or to make them miserable). The bullics of this butcher (cow-killer), at the time of his Ministership forcibly ejected the poor Sikhs (from their lands) and swallowed thousands of acres of Shamlat lands. Through sheer force he at the same time, through his agents and Mukhtars, disgraced the daughters and sisters of the poor Hindus and the untouchables. We have not forgotten the beatings given to wayfarers.
3. The Public fully understands his attempts of white-washing propaganda which says that this wolf has stood up (for election) with the consent of the people of Bhadson. Those, whom he calls the people of Bhadson, they are merely some officials whom he has purchased by giving them 12 or 13 hundred rupees.
4. The Hindu Public fully knows the good deeds of his family. At the time of his Ministership he got the Brahmans, Banias, Nais, Chimbas and other Hindu brethren to be declared as non-agriculturists after great efforts.

24. The statements in these posters according to the petitioner would constitute the major corrupt practice falling under S.123 clause (5) of R. P. Act, 1951. In the case of that corrupt practice what the law requires to be found is the following :—

- (a) The publication of statement by a candidate or his agent or by any other person with the connivance of the candidate or his agent ;

- (b) The statement to be of fact which is false and which he either believes to be false or does not believe to be true ;
- (c) It should be in relation to the personal character or conduct of any candidate;
- (d) It should be a statement reasonably calculated to prejudice the prospects of that candidate's election.

25. Considering the last of these ingredients first, there would seem to be no doubt that statements like those contained in these posters were reasonably calculated to make the voters of one class or the other to think of Shivdev Singh as a vile man who judging of his character from the statements in relation to their class as disclosed was likely to act adversely to their interest and such feeling would turn away the voters of that class from him in consequence. The purpose of issuing the posters as part of the election propaganda campaign of S. Dara Singh was this and no other. This was conceded by the counsel arguing for S. Dara Singh and it could not be shown to be otherwise. A set of statements was designed to counter the claim of Shivdev Singh which he was thought to be putting forward to get support of one section or the other. To the Sikhs generally and to those loyalists who had respect for the King, he was shown as a man responsible for the abdication of a patriotic Maharaja like Ripudaman Singh and for the repression of the agitation which resulted upon his abdication and also for attempting to overthrow Ripudaman Singh's son Partap Singh (Ex. P-1 and Ex. P-4) to the tenant class who would be inclined to support him out of their ingrained respect for the landlord, the outcome of feudalism of centuries, he was sought to be depicted as an oppressive landlord who never wished well of his tenants (Ex. P-3 and P-4). The Hindus and the Harijans, to whom he was trying to appeal for support as an independent candidate in opposition to the Akali candidate who in the prevailing circumstances might be supported by the Sikhs generally, were regaled with the allegations what he and his mukhtars had been doing against members of their communities (Ex. P-2 and P-1). To those to whom his candidature was likely to appeal by reason of his position once held by him as a Prime Minister and administrator a series of acts of mal-administration resulting in the oppression of poor people were disclosed (Ex. P-4) and to the people generally he was shown to be attempting to get support by offers of bribe (Ex. P-1 and P-4). We feel no doubt that the statements in these posters were calculated to wean away voters of the above mentioned classes from Shivdev Singh so to prejudice the prospects of his election.

26. On the question whether the statements are to be regarded as relating to the personal character or conduct of the petitioner, we have shown in para. 13 above why the acts alleged to have been done by him while in the office of the Prime Minister of Nabha State must be so regarded. The statement about this responsibility for deaths of many cows as a result of an order passed during his regime requiring the cattle taken for grazing into Government Forest to wear iron rings on their necks in consequence of which the animals got entangled with branches of trees and were killed is also a reflection on the personal character of Shivdev Singh. He is intended to be regarded as a cruel man to the extent of being a cow killer, and as cow in India is an object of veneration for all whether Sikhs or Hindus or Harijans, the purpose was to shock the sentiments of all sections and to prejudice him in the eyes of the people. The other statements in the posters are on the face of them relating to the personal character of Shivdev Singh.

27. About the publication of these posters, the petitioner stated in List I-A of the particulars that they were published throughout the Bhadsan constituency between 3-12-1951 and 14-1-1952 and specially in the five places named on the dates mentioned against these as under :—

1. Laut (On 2-1-1952).
2. Kakrala (On 14-12-1951).
3. Tongan (On 15-12-1951).
4. Bhadsan (On 16 and 17-12-1951).
5. Ladda Heri (On 15-12-1951).

The last date for withdrawal of nominations was 3-12-1951 and evidently the election propaganda started after that date. The taking of polls commenced on 7th January 1952 and concluded on 14th January 1952 after which propaganda in every form necessarily ceased. The petitioner not having definite information about the date of publication in other places chose to refer the publication to the period from the earliest to the last day while there was occasion to do election propaganda. A number of witnesses have been examined on the side of the petitioner from the five villages named who state that in these villages these posters were distributed and affixed to the walls of the houses or the gate of the village and also read out to the people when Dara Singh's workers visited their villages round about the dates stated by the petitioner. We do not find it necessary to examine this evidence in detail or critically because we find that the circumstances of the case leave no doubt in our minds that the posters were widely circulated throughout the constituency before the dates of polling which is all that is necessary to be proved in order to attract the provision in S. 123(5). Even if the evidence does not make out the publication to have been precisely on the dates which the petitioner stated in respect of the five villages specifically, that would not justify our coming to a finding that there was no publication proved at all.

28. The posters if we are to go by the names printed on them were issued not by Dara Singh himself but by others working in support of his candidature. The fact that these persons were working in support of the Akali Party of which Dara Singh was the nominee has not been disputed on behalf of the respondent. It is in fact admitted that the cost of printing of all these posters has been paid by Dara Singh himself. They were all printed at the Shalida Art Press, Patiala where S. Dara Singh got his other election literature printed about all of which the Press billed him for Rs. 525 on 15th January 1952 i.e., as soon as the election was over and he paid off the bill without demur. The bill which is filed with the return of election expenses contains a note that all the printing was done on the orders placed by S. Dara Singh himself and we have no doubt that they were so placed with Dara Singh's consent even if he did not himself do it. As already stated two posters Ex. P. 1. and P-4 are issued by Gurcharan Singh Torah who as President of the Akali Jetha had taken the initiative in starting the election campaign on behalf of Dara Singh by requiring Shivdev Singh to reply to the set of questions as in Ex. P. 1 which were provoked by Shivdev Singh's election manifesto in Ex. R-2. We cannot think that Dara Singh could have remained uninformed of all this propaganda fiercely and vigorously carried on in his support. We have it in the evidence of Kartar Singh R. W. 26 that S. Dara Singh had discussed with Gurcharan Singh about the poster Ex. P-1 about 8 days before the polling which would be at the end of December, 1951. Ex. P-3 was issued as an invitation to the public to attend the conference at Laut village on 2nd January 1952 and it must have been issued and distributed before that date. Dara Singh admits that he had been consulted about presiding over that conference which must have been before that poster was published and this also shows that it was published with his consent. The large number of the posters that were got printed there 1,500 copies each of Exhibits P-1 and P-2, 500 of Ex. P-3 and 700 of Ex. P-4 as per bill of the Press, were meant for distribution and S. Dara Singh in his evidence does not say that any of them were left unused. They were all for purpose of election propaganda and may be taken to have been published before the polling came on. Though in the pleadings the respondent was not willing to admit these facts in a straightforward manner, there cannot be any doubt, looking to the circumstances, that the four posters were published with respondent's consent and were freely distributed in the constituency which was the purpose of getting them printed in large numbers and the publication was before the dates of polling.

29. This is all that is necessary to be established to prove the publication for purposes of S. 123 (5), and we think that nothing is to be made of the fact that publication in the five villages named may not have been precisely on the dates mentioned by the petitioner in List I-A of the particulars. On behalf of the respondent such discrepancy between the pleading and evidence in respect of these dates is sought to be made out by reference to S. Shivdev Singh's (P. W. 82) statement in the witness-box. He stated that Gurcharan Singh gave him the manuscript of the set of questions in Ex. P-1 on 22nd December 1951 and he brought out the reply Ex. R. 1 on 24th December 1951. From this it was argued that according to Shivdev Singh himself the questions must have been printed in Ex. P. 1 sometime after 24th December 1951 and the other posters from the Tewar of their contents could come in sequence subsequently to Ex. P. 1 and as none of these had thus come into existence before 24th December 1951, the pleading about their publication in the five villages before 17th December 1951 and the mass of evidence relating to such publication should all be ignored as mere fabrication. We do not think that we would be justified in accepting all this argument constructed on that statement of Shivdev Singh which possibly may not itself have been accurate. There is no question that the election manifesto of S. Shivdev Singh Ex. R. 2 was brought out very early after 3rd December 1951 and was the starting point of the election campaign and the resulting controversy that was carried on between the two candidates and their supporters during the one month before the polling. The questionnaire as in Ex. P. 1 which was provoked by the issue of Ex. R. 2 could not therefore, have been much delayed and there is every reason to suppose that Exhibits P. 1, P. 2 and P. 4 were brought out quickly to counter and the attempt of Shivdev Singh to catch the imagination of the public by the ambitious performance adumbrated in Ex. R. 2. The conference at Laut was to our mind the last set of this series which had to be delayed because it necessitated a good deal of preparation. It was intended to give there a visual demonstration of the atrocities perpetrated by the landlords in general and by Shivdev Singh in particular by staging a kind of dramatic performance, the writing of and the training of performers in which must necessarily take sometime. That was also to be postponed to a date a few days before polling in order to leave it as the last impression on the minds of the people before they went to the polls. We have it in the evidence of two of the respondent's own witnesses that these posters had been seen by them in circulation several days before 24th December 1951. Manohar Singh R. W. 28 himself the polling agent and an indefatigable worker of S. Dara Singh states that he had seen the posters Exhibits P. 1, P. 2 and P. 3 in circulation about 15 or 20 days before the starting of polls which would be before 24th December 1951. Bachan Singh R. W. 92 an Akali Jatha worker who was carrying on vigorous propaganda for the Akali Party candidate had seen Ex. P. 1 in circulation about a month before polling, which would show that it had been brought out soon after the election campaign opened on 3rd December 1951 with Shivdev Singh's manifesto Ex. R. 2. We find that the posters Exhibits P. 1 to P. 4 were printed with the consent of S. Dara Singh and they were distributed and published freely in the constituency and at the places named by the petitioner.

30. It remains to be considered if the statements in the posters are proved to be false. We think that in this ingredient of S. 123 (5), the knowledge and belief about the falsity of the statements

are to be shown as being of the person who has published the statement and not always of the candidate in whose interest they are published. This is manifest because what we have to consider about the impugned statements is the intent of the person making them if he did it in good or bad faith; the candidate himself being made liable vicariously for the act of such person. We also accept that initially the onus of proof is on the petitioner to show that the statements were false to the knowledge of the publisher and that he could not have believed them to be true. It is also evident that if a statement is shown to be totally false, we have to infer that the maker of it could not have believed it to be otherwise and in such case it is for the publisher to show if there were any circumstances from which he was led to believe the statement to be true. Viewing in this manner, we find that there is a statement by Shivdev Singh in the witness-box that the statement of acts alleged to have been done by him in relation to the Maharaja Ripudaman Singh or Partap Singh and about those said to be done by him during his ministership are untrue. His election agent, Gurbachan Singh P. W. 83 has stated that all the impugned statements in the posters Ex. P. 1 to P. 4 are untrue. This evidence in our view is sufficient to discharge the initial onus on the petitioner. In rebuttal the respondent did not produce any of the persons who are named in the posters as responsible for bringing them out and we have no explanation from them how they could have believed them to be true if they are in fact false. S. Dara Singh in his evidence has referred to some of these statements and attempted to show by his own evidence and by the evidence of some witnesses how the making of them may have been justified. We proceed to consider this with reference to each statement separately. We wish to point out here that in the pleadings the respondent beyond a vague and general denial of the particulars about these posters contained in list A of the petition, did not give any indication that he proposed to justify the making of any of them and if so what were the facts and circumstances relied on for the purpose.

31. Question No. 21 reproduced from Ex. P. 1 in para 9 above imputes to Shivdev Singh a charge of bribery in connection with the election by making gifts of cycles and blankets to the people. The statement is general and would be understood to convey the making of such gifts freely to voters. In the argument before us the counsel for the respondent stated that this was intended to mean the giving of cycles and blankets to serve workers who were therefore warned that they would be taken back by Shivdev Singh, so that such workers may be dissuaded from working in Shivdev Singh's support. Shivdev Singh had made a categorical denial of this statement about gift of cycles and blankets in his reply Ex. R. 1. Still the statement was repeated and circulated in poster Ex. P. 1 and nothing was disclosed in the pleading about the persons referring to whom this statement was believed to be true. In this state of things, we do not think that any justification can be inferred by a statement of a few witnesses examined on the side of the respondent that one or the other of Shivdev Singh's workers was seen riding a new cycle or carrying a new blanket. It is easy to find among the supporters of a candidate some person to make a vague statement of this kind which in the absence of its indication in the pleading cannot be accepted for rebuttal of the proof of the statement being false.

32. The implication of question No. 24 in Ex. P. 1 relating to Maharaja Ripudaman Singh is repeated in Ex. P. 4 also. These may be considered with the statement in question No. 25 in Ex. P. 1 relating to Jaito agitation and the statement No. 5 (in para. 12 above) relating to attempted removal of Maharaja Partap Singh in Ex. P. 4. It appears that when Maharaja Ripudaman Singh was the ruler of Nabha State, Shivdev Singh was prosecuted on a charge of abetment of murder of one Jang Singh. He was convicted and sentenced to life imprisonment and he was undergoing this sentence in 1923. There was a long standing feud between the Maharaja of Patiala and the Maharaja of Nabha and the Political Department of the Government of India ordered an inquiry to be instituted, Justice Stuart of the Allahabad High Court being appointed commissioner for making the enquiry. As a result of his report Maharaja Ripudaman Singh was required to abdicate in 1923. He renounced the Gadi on 2nd July 1923 and leaving the State went to reside at Dehradun from where later on he was required to remove himself to Kodaikanal and remain in detention there. In the inquiry of Justice Stuart there appears to have been the question of the propriety of implication of S. Shivdev Singh on the murder charge, it being represented that S. Shivdev Singh because of his good relations with the Maharaja of Patiala and because of some disagreement between him and the Maharaja Ripudaman Singh was being victimised by the latter and the prosecution for murder and the conviction were brought about falsely because of Maharaja Ripudaman Singh's displeasure with him. As a result of that enquiry Shivdev Singh's release was also ordered and he came out of the prison on 9th September 1923. Upon the abdication of Ripudaman Singh there was considerable resentment amongst the Akalis which took the form of a systematic agitation. We are told that at Jaito in the Gurudwara the Sikhs started continuous recitation (Akhand Path) of the sacred book (Grant Sahib) and processions of Sikhs (Morchas) were led from different parts of the country to Jaito. Maharaja Pratap Singh the minor son of Ripudaman Singh was installed on the abdication and during his minority the administration of the State was carried on by a Council of Regency with an European Officer of the Indian Civil Service as the Chief Administrator. The new administration could not look upon the agitation at Jaito with equanimity and ban was imposed on the processions. This being defied arrests were made and once we are told firing had to be ordered on the unlawful assembly of these agitators. Maharaja Pratap Singh was given ruling powers in the year 1941. On assuming the reins of administration he first appointed Shivdev Singh as his minister without portfolio and later made him his Chief Minis-

ter. But soon there was some disagreement between Shivdev Singh and the Maharaja and Shivdev Singh had to lay down his office of Prime Minister on 28th November 1942.

33. It has been necessary to give this brief resume of these political events in the erstwhile Nabha State to make the implications of the above mentioned statements in the posters intelligible and also for a proper appreciation of what will be stated hereafter about these statements and the statements about other acts of Shivdev Singh stated to have been done by him as Chief Minister. The statements describe Ripudaman Singh as a patriot and impute to Shivdev Singh the treachery of having brought about the abdication and not satisfied with that being vindictively instrumental in the repression of the patriotic people who wanted to agitate against the abdication. Shivdev Singh has deposed that he was in jail long before the abdication and was released after the abdication was an accomplished fact and he has stated that he had no hand in bringing about the abdication or in the administration's decision to suppress the agitators at Jaitu. We must accept the statement because we do not find anything in the way of legal evidence to infer that anybody could have good reason to believe the statements in these posters to be true. Amongst the acts of mal-administration of Maharaja Ripudaman Singh about which the commission of enquiry had investigated, there may have been a charge of falsely implicating Shivdev Singh in the murder charge and Shivdev Singh in his evidence before the commission may have explained how ill feeling had grown between him and the Maharaja over their wives but all this at least shows that Shivdev Singh rightly or wrongly was a victim of Maharaja's wrath. It does not help to show that he was instrumental in bringing about the enquiry and the consequent abdication of the Maharaja. We are not shown any thing suggested anywhere in the record of that enquiry that Shivdev Singh had any hand in causing it to be instituted beyond the fact that his own case was one of the subjects of that enquiry.

34. So also about the affair at Jaitu Shivdev Singh was not holding any office in the Council of Regency and we have nothing to show how he could be believed to have been responsible for the administration's decision to suppress that agitation or for the firing that had to be resorted to disperse one of the processions there. S. Dara Singh has told us from the witness-box that while these processions were being taken out at Jaitu he had known of the visits of S. Gurdial Singh Dulat who was at the time Assistant Administrator and of Shri Nathuram who was the head of the Nabha Police to the house of S. Shivdev Singh. We have nothing to show that if in fact there was any such exchange of visits these were anything more than social calls and cannot infer that administration's decision to deal firmly with the agitation was being inspired by Shivdev Singh. S. Dara Singh himself was studying in the college at Patiala those days and had no opportunity of seeing these visits to say nothing of being present at any of them. He states that S. Gurdial Singh Dulat sometimes spoke to him of what took place at such meetings. Any statement of S. Gurdial Singh on this point, cannot be admissible in evidence under S. 32 of the Evidence Act. We have therefore no legal evidence to show that Shivdev Singh had anything to do with the repression at Jaitu for which he was charged in Ex. P. 1.

35. So also we have no material for finding that Shivdev Singh had been plotting for removal of Maharaja Partap Singh or had attempted his removal. There was no doubt some cause for estrangement of feelings between Shivdev Singh and the Maharaja and we are told that it had been created during the visit of the Maharaja to Shivdev Singh's house on the occasion of a marriage. All that we have is that the Maharaja thereupon required Shivdev Singh to resign his office and Shivdev Singh resigned. It is impossible from this to infer that S. Shivdev Singh had made an attempt to remove Maharaja Partap Singh from the Gadi as stated in Ex. P-4.

36. Question No. 26 in Ex. P-1 imputes to Shivdev Singh a propaganda through his workers that Akalis had the intention of removing all the non-sikhs from the Punjab and Pepsu in order to make these states the exclusive habitat of the sikhs and for that purpose there will be created a Bhakra line just as the Wagha line (representing the boundary line between Punjab and West Pakistan) had been created to give the Muslims their exclusive State. It was not averred by the respondent in the pleadings that any such propaganda was in fact done by any of the men of Shivdev Singh. On comparing Exhibits P. 1 and R. 1 and reading them with the evidence of Shivdev Singh, it appears that this question No. 26 in Ex. P. 1 was No. 22 in the manuscript question paper given to Shivdev Singh and was replied to under No. 22 by Shivdev Singh in Ex. R. 1 wherein he stated that no such propaganda was done by his workers and that the statements like these were in fact being made by men of Akali party. We are not satisfied on evidence also that any such propaganda was done by Shivdev Singh's men. We feel that this question was posed only to counter and what Shivdev Singh stated as item No. 8 in his manifesto Ex. R. 2 about his idea to bring about Hindu-Sikh unity. The question was posed to impress on the people that his profession of Hindu-Sikh unity was a hollow promise which was being held out now when he after rejection of his application for Akali ticket, had to stand for election as 'Independent' and that if he had secured the Akali ticket, he would have stood up for the creation of Bhakra line. This was intended to make the Hindu voters to look at him with suspicion. We do not find that there was any justification for making the suggestion implied in this question No. 26 in Ex. P. 1.

37. In the statements at Nos. 2 and 3 in para. 20 above which are from Ex. P. 4 there are vague allegations about excesses and atrocities perpetrated by him as landlord and that the villages now

forming his estate have been formed by taking off bits of the lands of poor men at different times. This statement was apparently intended to set the tenant class against Shivdev Singh. Shivdev Singh has explained that the three villages which he owns were purchased by his grand father Sewa Singh who had himself been a Prime Minister of Nabha State the purchase being made at auction sale. We do not think that a purchase at an auction sale could reasonably be described as acquisition of an estate by snatching of poor man's lands. We are not referred to any documentary evidence to prove that an augmentation of the properties has been made by illegal possession of the lands of others. In the absence of proof of any encroached lands included in the villages we cannot feel any justification for this statement. The proof should have been of documents and any irresponsible statement made by a witness here and a witness there cannot be accepted as sufficient basis for proof of belief in the truth of the statement.

38. Statement at Nos. 4 and 7 in para. 20 above are referring to orders alleged to be passed by him while holding the office of the Prime Minister of Nabha. There is nothing to prove that in his time there was any order passed about Shisham trees on the road side lands being treated as property of the State, nor is any order proved that the cows were to be brought for grazing in the State Forests only after they were equipped with iron rings on their necks. Shivdev Singh has stated that he was not responsible for any such orders. In fact the evidence of Santa Singh R.W. 3 is to the effect that the order was in force for three years and was cancelled by Shivdev Singh during his Ministership when he was approached for redress. This evidence if accepted would mean that the order whatever it was had been made not during Shivdev Singh's administration and Shivdev Singh only did a good turn by cancelling such order.

39. The statements at No. 7 in para. 20 above imputes to Shivdev Singh criminal breach of trust for taking the entire sanctioned *taccavi* for sinking of wells to himself and his relatives and not allowing any part of it to be distributed to poor people for whom it was primarily sanctioned. We are not told any facts on the basis of which such statement imputing dishonesty could be made. Statement at No. 8 in that para. speaks of faithlessness to the master and that at No. 9 makes an allegation that he was offering money and liquor for purchasing votes. We do not find that there was anything to justify the making of such statements.

40. The first passage reproduced from Ex. P. 3 in para. 22 above reads as a statement of facts describing the characteristics of the landlord class generally. But the poster as can be gathered from the earlier portions of it was issued for calling people to attend at laud for seeing Shivdev Singh and his Jagirdari clique in real form. In the context of that and in view of the last sentence of this first passage it is clear that all the allegations in the passage are referring to Shivdev Singh personally. The second passage clearly refers to him as Prime Minister. The charges stated herein are the same which have been examined above and found to be false statements, only they have been repeated in stronger words.

41. The last sentence of the 2nd offending passage in Ex. P. 3 and the statement at item 4 of Ex. P. 2 as reproduced in para. 23 refer to the same matter namely that Shivdev Singh was responsible for the passing of the Nabha State Land Alienation Act. This Act according to the evidence of P.W. 70 Kartar Singh who held high offices in the Nabha State, was brought into force during the regime of the Council of Regency while Shivdev Singh became Prime Minister under Maharaja Partap Singh after his investiture with ruling powers in 1941. We have seen a copy of that Land Alienation Act which is of 1940 and had been assented to on 27-9-1940 so that it had become law of the State before Maharaja Partap Singh got the ruling powers and before Shivdev Singh became Prime Minister. This shows that the above allegations, were recklessly made without caring to a certain the truth of the matter. The idea appears to have been to attribute all acts of Nabha administration which went against the interest of the common people, to Shivdev Singh. Public memory being proverbially short, the people could easily be led away to think that Shivdev Singh must have been responsible for the hardships which the various classes had to suffer by being treated as non-agriculturalists. We find this to be false charge made against Shivdev Singh.

42. The items 2 and 3 reproduced from Ex. P. 2. in paragraph 23 above contains statements about Shivdev Singh's idea to drive away Hindus and Harijans beyond Delhi. This is again the same statement as pertaining to the creation of Bhakra Line which we have already found had been made against Shivdev Singh and repudiated by him in ExR. 1. It is now coupled with another statement that Shivdev Singh during the census operations had incited the Jats and Sikhs against the Hindus to make the latter miserable. The reference is perhaps to an allegation that he had insisted upon the Hindus to give out their language as Panjabi on pain of being turned out of this circle. There is however nothing to show that any such attempt at creating ill-will had been made by Shivdev Singh and this statement seems to have been made to counteract like item in his programme of Hindu Sikh unity. There are again statements in the same paragraphs about Shivdev Singh being an oppressor of Sikhs also because he is stated to have forcibly ejected poor Sikhs from their lands during his Ministership and also taken possession of Shamat lands of the villages. There is a further allegation that through his agents and Mukhtars he had disgraced

he women folk of the Harijans and Hindus and had belaboured the way farers. Here again we can find no instances of such atrocities committed by Shivdev Singh or his men. Dara Singh's statement in the witness-box that he was once defence lawyer for Shivdev Singh's mukhtiar who was prosecuted in connection with a woman before an Amloh Magistrate cannot make out any justification for such reckless statement. We are not told that the result of that case was and whether the charge was found to be true or false nor how Shivdev Singh could be blamed for that misconduct of the Mukhtiar.

43. In the next line in the same poster Ex P. 2, the charge is that Shivdev Singh was giving out that he was desired by some people of Bhadson to stand for election, and that actually he had no support from Bhadson people except some officials whose support he had enlisted by paying them large sums of money. Here again a charge of offering bribes to secure support for election has been made but no instance is disclosed on the strength of which such damaging statement could be justifiably made.

44. We thus find the posters were published with not one or two but several statements defamatory of the character of Shivdev Singh made recklessly and in very strong and undignified language, not one of them being true or believed to be true. We do not think it can be any justification for the making of such statement, to say that they were made in the heat of the election when passions in the opposing camps ran high. Elections have to be free and fair and it is with that object that S. 123(5) of the Representation of the People Act makes defamatory statements against a candidates' character a major corrupt practice which will vitiate the election. The workers of the Akali Party and the other supporters of S. Dara Singh in this case seem to have assumed that election had given them licence to say anything against a rival candidate to bring him down in the estimation of every class of people to whom he might possibly look for support to his candidature. S. Dara Singh having chosen to be candidate of the Akali Party was it seems only too willing to be left entirely in the hands of the workers of that party and to submit to whatever they proposed to do in the form of propaganda by issue of posters which he undertook to get printed for them and by visual demonstrations as in the conference at Laur over which he agreed to preside. He cannot now avoid the consequences of such propaganda if it is found to be illegal by arguing that the Akali Party men in their zeal were doing it. He encouraged them by his presence and by giving his helping hand and there is no circumstance present in this case which could have been used in mitigation of Dara Singh's responsibility for the corrupt practice under S. 100(3) of the Representation of the People Act. All the ingredients of the corrupt practice under S. 123(5) of the Act have been proved in the matter of publication of these posters and thus would have been sufficient under section 100(2)(b) of the Act to declare the election of S. Dara Singh to be void though the necessity for making that Declaration does not remain. Having recorded the finding about commission of that corrupt practice as required by S. 99(a)(i) of the Act we indicate that this entails disqualification under S. 140 of the Representation of the People Act 1951 upon S. Dara Singh respondent No. 1.

45. This disposes of issue No. 1 we do not find it necessary to discuss the issues No. 2 to 6 as a finding in petitioner's favour on any of them is not to serve any further useful purpose as pointed out in para 6 above. We are however pressed for a finding on issue No. 7 relating to return of election expenses because if it is found false in any material particular, the finding can result in still another disqualification under S. 143 of the Representation of People Act. The only point pressed about the return is the omission to show therein the hire paid for motor vehicles. The respondent admitted that four motor lorries belonging to his relatives and friends were being used for election propaganda work but stated that he was allowed to them on condition of using his own petrol and no hire was charged for loan of the vehicles. It is urged on behalf of the petitioner that though the respondent may have obtained free use of the vehicles and free services of the drivers, it was necessary for him to show the value of such free services as an item of receipt and to debit the same as an item of expenditure under the appropriate head in the return and this argument is supported by the observations to this effect made in Nimar M. R. Case reported in Sen and Poddar's Indian Election Cases at Page 625. Though this was the proper thing to do, the omission cannot in our view be relied on for finding the return in this case to be false in material particulars. The maximum amount of election expenses permissible was Rs. 4000/- while the return of the respondent shows the total expended as Rs. 3095/13/5. This left a margin of Rs. 900/- odd and we have no basis for finding that the value of the free services could have been as much as this amount. The omission could not therefore be deliberate and we cannot therefore find the return to be false in material particulars.

46. Under issue 8 we need not make an order now that the election is void since that is already so declared upon Election Petition No. 70. We only record a finding about commission of corrupt practice under S. 123(5) of the Representation of People Act 1951 by the respondent No. 1 S. Dara Singh which would entail disqualification under S. 140 of the Act. Since we have not discussed all the issues, we do not feel justified in ordering the full costs of the petitioner to be paid by the respondent No. 1. We order that he should pay to the petitioner half costs of the evidence, Rs. 500/- for pleader's fee or less as may be certified and other costs in full and that the remaining costs be borne by the parties as incurred.

SCHEDULE OF COSTS

	<i>Costs of S. Shivdev Singh petitioner</i>		<i>Costs allowed against respondent No. 1</i>		<i>S. Dara Singh Res- pondent No. -</i>
	<i>Costs incurred</i>		<i>Costs allowed against respondent No. 1</i>		
	Rs.		Rs.		Rs.
(1) Stamp for power of attorney and appli- cations	7 2 0		7 2 0		7 0 0
(2) Stamps for process fee	125 0 0		62 8 0		15 0 0
(3) Subsistence for witnesses	257 4 0		128 10 0		53 6 0
(4) Pleader's fee	2,000 0 0		500 0 0		No certificate filed.
TOTAL	2,389 6 0		698 4 0		75 6 0

(Sd.) V. B. SARWATE, *Chairman.**Dated, 25th April 1953.*(Sd.) E. M. JOSHI, *Member.*(Sd.) RAGHUNANDAN SARAN, *Member.*

Certified to be true copy.

V. B. SARWATE,

Chairman, Election Tribunal, Patiala.

ANNEXURE ' A '

BEFORE THE ELECTION TRIBUNAL PATIALA

Election Petition No. 90 of 1952

S. Shivdev Singh, Petitioner Vs. S. Dara Singh and others, Respondents.

Order dated 18th December 1952

(See Para. 4 of the Order dated 25th April 1953)

Issue No. II.

Is the respondent No. 1 entitled to claim an inquiry in these proceedings before the Tribunal into his allegations of the petitioner's return of election expenses being false, for purposes of disqualification under S. 143 of the Act ?

We find on issue No. II that no inquiry about return of election expenses of the petitioner can be claimed in these proceedings. The making of a return of election expenses which is false in any material particular is deemed to be a corrupt practice according to S. 124 (4) of the Representation of the People Act. Though thus included in the corrupt practices, it is not regarded as very consequential and is termed a minor corrupt practice which ordinarily cannot materially affect the result of an election already over. The erring candidate is, therefore, penalised for it by disqualification for a period under S. 143, which will have the effect of keeping him out of an election for that period. Being a corrupt practice committed in connection with the election which the petitioner seeks to set aside by making the election petition, he is permitted to point out such corrupt practice also on the part of the returned candidate, so that in the event of his succeeding in getting the declaration, the returned candidate may be penalised under S. 143 and not be entitled to figure in the election following such declaration. From the language of S. 100 it would appear that the petitioner has to prove allegations of corrupt practices against the returned candidate only, if they are not corrupt practices of the kind specified in clauses (a) and (b) of sub-section (1) of S. 100. This section read with sections 31 and 63 would, therefore, show that the allegations of what are deemed corrupt practices (which would include the making of a false return) are to be made against the returned candidate only and not against other candidate at the election. Under Section 86 the Tribunal is appointed to try the election petition only and not for inquiry into any other matters extraneous to the petition as the parties to the petition may think fit to agitate. Under the Representation of the People Act a respondent is allowed to urge corrupt practices on the part of the petitioner only by way of recrimination under section 97 when the petitioner has claimed a seat for himself. In making such recrimination when alleging corrupt practices on the part of the petitioner, the making of a false return of election expenses may also be alleged as being included in the same corrupt practice and an inquiry about it by the Tribunal may be claimed in the attempt not only to thwart the claim of the petitioner to a seat as a result of that election but to keep him out of another election. The recrimination is treated as a counter election petition and, therefore, it is inquired into by the Tribunal in the same way and to the same extent as the election petition.

Under the Act, however, no inquiry is indicated by the Election Tribunal into the allegation of false return of election expenses except in the two cases above specified. It follows, therefore, that this allegation cannot be made against the petitioner who is not claiming a seat for himself and the Tribunal cannot be required to adjudicate upon it. Section 143 in referring to the finding about false return at the trial of election petition under Part VI evidently refers to the two cases adverted to above, in which the election tribunal would be called upon to make inquiry about return of election expenses. There is nothing in the words of that section to confer jurisdiction on the election tribunal to make inquiry into such allegations in respect of the petitioner who has not claimed a seat for a respondent other than the returned candidate. We answer issue II in the negative.

(Sd.) V. B. SARWATE—*Chairman*.

(Sd.) E. M. JOSHI—*Member*,

(Sd.) RAGUNANDAN SARAN—*Member*.

[No. 19/90/52-Elec. III/5934.]

S.R.O.831—WHEREAS the election of Shri Radha Mohan Rai, as a member of the Legislative Assembly of the State of Bihar from the Tarari-cum-Piro Constituency of that Assembly, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Sheo Pujan Rai son of Shri Haricharan Rai, Village Jamuaon, P. S. Piro, District Shahabad ;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said petition, has in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Election Commission ;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

ELECTION TRIBUNAL, PATNA

PRESENT :

Shri Basu Prasad, Retired District Judge—*Chairman*.

Shri Hargobind Prasad Sinha, Retired District Judge—*Member*.

Shri Aditya Narayan Lal, Advocate—*Member*.

ELECTION PETITION NO. 143 OF 1952

In the matter of Election to the Bihar Legislative Assembly from the Tarari-cum-Piro constituency in the district of Shahabad.

Shri Sheo Pujan Rai S/o Shri Haricharan Rai, resident of village Jamuaon, P. S. Piro, District Shahabad—*Petitioner*.

Versus

1. Shri Radha Mohan Rai S/o Shri Dina Rai, village Tar, P. S. Piro, Dist. Shahabad.
2. Shri Ram Deo Singh S/o Shri Sheonandan Singh, village Kataria, P. S. Piro, Dist. Shahabad.
3. Shri Kamla Singh S/o Shri Ishar Dyal Singh, village Bakaragaon, P. S. Tarari, Dist. Shahabad.
4. Shri Kanhaya Prasad S/o Shri Birja Lal, village Malaur, P. S. Piro, Dist. Shahabad.
5. Shri Debi Dyal Bodh S/o Shri Balgovind Sah, village & P. S. Piro, Dist. Shahabad.
6. Shri Gaya Rai S/o Shri Balkeshwar Rai, village Jamuaon, P. S. Piro, Dist. Shahabad.
7. Shri Devi Dyal Ram (S. C.) S/o Shri Brikash Bhagat, village Dusadhi Badhar, P. S. Piro, Dist. Shahabad.
8. Shri Upadhya Ram, S/o Shri Chathoo Ram, village Haritola, P. S. Piro, Dist. Shahabad.

For Petitioner:

1. Mr. Lal Narain Singh, *Advocate*.
2. Mr. Harinandan Singh, *Advocate*.
3. Mr. Kamleshwar Prasad Sinha, *Advocate*.

For Respondent No. 1 :

1. Mr. Awadhesh Nandan Sahay, *Advocate*.
2. Mr. Kanhaya Prasad Verma (No. 2), *Advocate*.

The petitioner, Sheo Pujan Rai, and the Respondents were candidates for election to the Bihar State Legislative Assembly from the Tarari *cum* Piro constituency of Shahabad district. On counting of votes the candidates were found to have obtained valid votes as indicated below :—

(I) Petitioner (Shri Sheo Pujan Rai) (General)	16315
(II) Respondent No. 1 (Shri Radha Mohan Rai) (General)	16340
(III) Respondent No. 7 (Shri Debi Dyal Ram) (Schedule caste)	15118

The other candidates got 6,000 and odd votes or even less. Tarari *cum* Piro constituency is a double seated constituency and so Radha Mohan Rai and Debi Dyal Ram were declared elected from this constituency. The case of the petitioner is that villages Sikaria and Chanditola appertain to Nasirganj P. S. and were originally notified as forming part of Dehri constituency. But all of a sudden they were taken out from this constituency and were tacked to Tarari *cum* Piro constituency. The petitioner had not been supplied with the Electoral Roll of these two villages and had no opportunity to approach the electors and to present his views to them. So the voting for these two villages went against his interest.

It is also alleged that about 50 women voters of village Nagri, who were entered in the electoral roll by status, were not allowed to vote. But in similar circumstance women voters of Deo were allowed to vote.

Further allegation made is that the Returning Officer employed about 40 to 50 clerks for counting of votes. Some of them did the work of counting in the Verandah of the Sale-Tax Office at Arrah, while the Returning Officer sat inside the room. The result was that there was no supervision and there were mistakes in counting. For example, in respect of Polling Station No. 24, village Moap Kalan, the total number of ballot papers issued is 559 but the total number of votes counted as polled is 658 and Radha Mohan Rai is said to have secured 193 votes. The petitioner wanted recount of all the votes. This was allowed by the Returning Officer in respect of his votes and he was found to have secured 14 more votes. But the Returning Officer refused to recount the votes secured by Radha Mohan Rai. The petitioner suspects that figure 193 has been written instead of 93 with connivance of Radha Mohan Rai and his sympathisers. So, votes were illegally accepted or illegally refused and in reality the petitioner has secured a larger number of votes than Radha Mohan Rai. The petitioner, therefore, prays that the election of Radha Mohan Rai be declared valid and he (petitioner) be declared to have been duly elected.

Radha Mohan Rai (Respondent No. 1) has filed a written statement denying the allegations of the petitioner. According to him, villages Sikaria and Chanditola form part of Chaukidari Union No. 8 of Bikramganj P. S. and were rightly included in Tarari *cum* Piro constituency. He also denies that the petitioner had no opportunity to approach the voters of these two villages, that the women voters of Nagari were wrongly excluded from voting and of Deo wrongly allowed to vote, and that mistakes were committed in counting of votes.

Respondent No. 4 (Kanhaiya Prasad) has filed a written statement supporting the case of respondent No. 1 (Radha Mohan Rai). As he was not present at the time of hearing of the petition, his written statement need not be considered in detail.

At the time of hearing Respondent No. 1 filed additional written statement claiming that the petition be dismissed as Ram Ekbal Singh and Mahadeo Ram Dhobi, who were duly nominated candidates, have not been impleaded as respondents.

On the pleadings of the parties the following issues arise for determination :—

Issues.

1. Is the election petition maintainable ?
2. Were there mistakes in the counting of the votes secured by the petitioner and the Respondent No. 1 ?
3. Did the petitioner or the Respondent No. 1 receive the largest number of votes ?
4. Were the voters of Sikaria and Chanditola included in the Electoral Roll of Tarari *cum* Piro constituency ? If not, has the result of the election been materially affected by their votes ?
5. Were the female voters of village Deo improperly allowed to vote and the female voters of village Nagri improperly disallowed to vote ?
6. Is the election of the Respondent No. 1 liable to be set aside ?
7. Is the petitioner entitled to a declaration that he has been duly elected ?

Findings.

Issues Nos. 2 and 3 :—When the hearing of the election petition was taken up, both parties agreed that not only the valid votes secured by the Respondent No. 1 at the Polling Station No. 24 be recounted, but that the entire valid votes secured by him as well as by the petitioner in respect of all the polling stations be recounted. This was done by the Tribunal in presence of the two parties and their lawyers and the result of recounting is given as indicated below :—

Radha Mohan Rai

No. of Polling station.	No of valid votes which were found in excess of that recorded in Form No. 14	No. of valid votes which were found less than that recorded in Form No. 14.
24	..	100
80	1	..
90	1	..
74	76	..
56	50	..
11	1	..
94	2	..
Total	131	100

Sheo Pujan Rai

No. of Polling station.	No. of valid votes which were found in excess of that recorded in Form No. 14.	No. of valid votes which were found less than that recorded in Form No. 14.
6	1	..
116	1	..
23	..	3
Postal Ballot papers	4	..
Total	6	3

So, the result of the recounting shows that Radha Mohan Rai has got 31 more valid votes than what has been recorded in form No. 14, while Sheo Pujan Rai has got 3 more valid votes than what has been recorded in that form. So, Radha Mohan Rai is leading by 53 votes, and not only by 25 votes as stated in the petition. At the time of argument, a question was sought to be raised on basis of entries in Form Nos. 10 and 15 that some of the ballot papers which should have been ejected as invalid, have been counted as valid in favour of Radha Mohan Rai. This question can not be allowed to be raised at this late stage when no allegation was made in the election petition or during the hearing of the case that ballot papers of any of the candidates had been illegally rejected or illegally accepted.

The other contention raised is that when Form No. 14 of Radha Mohan Rai (Ex. 12) shows the numbers of valid votes of polling station No. 74 and 56 to be only 9 and 33 respectively, these numbers cannot be increased to 85 and 83 as a result of counting by the Tribunal. The argument advanced is that when the Returning Officer applied his mind, while judging the validity of ballot papers, to only 9 ballot papers in respect of polling station No. 74 and to only 33 ballot papers in respect of polling station No. 56, the Tribunal cannot hold valid the ballot papers found in excess of these two figures. But we are unable to accept this argument as sound. The sealed packets containing valid ballot papers showed the figure 85 in respect of Polling station No. 74 and 83 in respect of polling station No. 56. So there is no reason why all the ballot papers found in these two packets should not be considered to be valid, especially when the recounting of all the valid votes, has been done at the express desire of the petitioner.

It is true that the Returning Officer employed 40 to 50 men for counting of votes. But, in our view, nothing irregular or illegal was done. Section 64 of the Representation of the People Act, 1951, lays down that the counting of votes is to be done by the Returning Officer or under his supervision. This has been interpreted on behalf of the petitioner as laying down that the supervision

should be very close and thorough, as if the counting has been done by the Returning Officer himself. It is simply impossible to expect that the Returning Officer personally should be able to count the votes of so big a constituency as Tarari *cum* Piro within a reasonable time. We had counted only the valid votes of two candidates and it took us seven days working about 4½ hours a day. So, it would have been a very long time for the Returning Officer to count all these votes, especially when he had also to do his duty as District Magistrate. It is therefore, not improper that he employed a large number of men to help him in counting the votes. When a large number of men employed for counting, the supervision cannot be very close, as if the counting has been done by the Returning Officer himself. All that can be expected is that he should take all reasonable precautions to ensure that the counting has been done correctly and that no candidate has been wronged intentionally. We have no doubt that the Returning Officer did take this precaution. His evidence shows that he had employed 26 parties, each consisting of three men headed by a Gazetted Officer. The ballot boxes were opened by him after examining the seals and at one time the contents of the ballot boxes of only one of the candidates used to be counted. The result of the counting used to be reported to him, and he used to announce the result to the contesting parties after noting it in Form 14 and other papers. So, the Returning Officer substantially followed the procedure of the counting as laid down in Clause VI of Rule 46 of the Representation of the People (Conduct of Election and Election Petitions) Rules, 1951. If any candidate had reason to believe that any valid had been counted as invalid or any invalid vote had been included in valid votes, he or his agent had right to demand inspection of the ballot papers under clause VII of Rule 46 of the Representation of the People Rules, 1951. There is nothing to show that any such demand was made by petitioner or anybody else. So, we have no reason to hold that valid votes of either of the parties have been treated as invalid or invalid votes have been included in valid votes. The thing that has happened is that due to some mistake or inadvertence, valid votes of some of the booths have not been correctly counted. There is nothing surprising in it when such a larger number of votes had to be counted within so short time. So, the mistakes found by us in counting of valid votes do not support the claim of the petitioner that he has, in fact, secured a larger number of valid votes than Radha Mohan Rai. It rather shows that the latter secured a large number of valid votes than shown in Form 14. So, these issues are decided in favour of Respondent No. 1.

Issue No. 4.—The claim of the petitioner is that village Sikaria (Thana No. 690) and village Chandi (Thana No. 691) lie within Nasriganj Police Station and were wrongly included in Tarari *cum* Piro constituency. To support this claim, the petitioner has examined himself and two other witnesses, namely, P. W. 3 and P. W. 4. P. W. 3 (Askaran Ahir) claims to be chaukidar of village Sikaria and Chanditola while P. W. 4 (Sheonandan Singh) claims to be circle panch of Circle No. 2 of Nasriganj Police Station in which Circle Sikaria and Chanditola are said to lie. But if these two villages really appertain to Nasriganj Police Station, and not to Bikramganj Thana it would not have been difficult for the petitioner to produce authentic Government papers in the Form of notification etc. to show that these two villages have been transferred from Bikramganj Thana to Nasriganj Police Station of Dehri Thana. On the other hand, the survey map (Ex. D) for Sikaria and the Survey map (Ex. D1) for Chandipatti show that these two villages lie within Bikramganj Thana. The Thana map (Ex. H) for Bikramganj Thana also shows that these two villages lie within Bikramganj Thana. A thana is a bigger unit than a Police Station and the map (Ex. H) shows that Thana Bikramganj consists of police stations Dinara, Doath and Bikramganj while the Thana map (Ex. H1) of thana Dehri shows that police station Nasriganj forms part of Dehri Thana. This makes it clear that villages Sikaria and Chandi cannot form part of Nasriganj Police Station. No doubt, the petitioner has produced the electoral Roll (Ex. 10) of Nasriganj Electoral Circle for District Board Election to show that villages Sikaria and Chandi lie within Nasriganj Electoral Circle. This Electoral Roll was published in 1939 and was sent purely for District Board election. It is hardly possible on its basis to accept the contention of the petitioner that villages Sikaria and Chandi form part of Nasriganj Police Station and were wrongly included in Tarari *cum* Piro constituency of the Legislative Assembly for which Electoral Roll was prepared in 1951.

The delimitation of Parliamentary and Assembly constituency (Bihar) Order, 1951 (Ex. 8) shows that Tarari *cum* Piro constituency consists of Tarari and Piro Police stations of Shahabad Sadar Sub-division and Chaukidari Unions 8, 10 and 11 of Bikramganj Police Station of Sasaram Sub-division, while Dehri constituency consists of Dehri Police Station and Nasriganj Police Station of Sasaram Sub-division. So, no part of Bikramganj Police Station forms part of Dehri constituency. Any doubt in this respect is set at rest by the list of booths published by the Government. The list (Ex. A) for Tarari *cum* Piro constituency shows that villages Sikaria and Chandi are included in booth Nawadih, serial Nos. 123 and 124 of Bikramganj Police Station.

The petitioner also did not raise any objection before the filing of the present election petition as regards village Chandi being wrongly included in Tarari *cum* Piro constituency. His petition (Ex. 3C) dated 12th Jan. 1952 shows that he made complaint only in respect of village Sikaria. On his complaint inquiry was started and the Sub-Divisional officer of Sasaram replied to the enquiry made from him by sending the telegram (Ex. 4) that village Sikaria formed part of Bikramganj Thana Circle No. 8, and was within Tarari *cum* Piro constituency.

No doubt, in the draft Electoral Roll villages Sikaria and Chandi were wrongly shown as forming part of Circle No. 2 of Nasriganj. But when this mistake was discovered immediate step

was taken to correct it. So telegram (Ex. 6) dated 21-12-1951 was sent by the Sub-Divisional Officer of Sasaram to District Magistrate, Arrah, informing him that village Chanditola which had been wrongly printed in Circle No. 2 of Nasriganj P. S. is included in Circle No. 8 of Bikramganj P. S. and is to be included in Tarari cum Piro constituency if this had not been already done. The certified copy of the Electoral Roll of Tarari cum Piro constituency (Ex. B) also shows that corrections were made and these two villages were shown as lying within Circle No. 8 of Bikramganj P. S. instead of Circle No. 2 of Nasriganj Police Station.

So, we are unable to accept the contention of the petitioner that these two villages have been wrongly included in Tarari cum Piro constituency and we have no doubt they really form part of this constituency.

An argument has been advanced that there was no legal preparation of the Electoral Roll in respect of these two villages. This argument is based on the contention that when these two villages were originally shown as forming part of Circle No. 2 of Nasriganj Police Station, there was no publication of draft Electoral Roll in respect of these two villages in Tarari cum Piro constituency. So, rule 9 of the Representation of the People (Preparation of Electoral Rolls) Rules, 1950 and the other rules relating to preparation of Electoral Roll were violated. But there is no evidence to show that the draft Electoral Roll prepared in respect of these two villages were not duly published, *i. e.* to say the villagers concerned were not aware of its preparation even though by mistake these two villages were shown as forming part of Circle No. 2 of Nasriganj Police Station. It is quite possible that though in print these two villages were at first wrongly shown as forming part of Circle No. 2 of Nasriganj Police Station, there was no mistake or omission in the publication of the draft Electoral Roll. The evidence rather goes to show that there was proper publication of the draft Electoral Roll of these two villages as corrections were subsequently made as shown by the correction List attached to Electoral Roll (Ex. B). We are therefore, unable to accept the contention that the Electoral Roll in respect of these two villages has not been properly prepared.

The list of polling stations (Ex. 4) shows that at some of the polling stations, polling was to begin so early as 4-1-1952. So, it is evident that the list was printed sometime before 4-1-1952 and the petitioner should have been aware that the polling in respect of these two villages would take place at Nawadhi Polling Station within Bikramganj Police Station. So if he did not obtain the copy of the Electoral Roll of these two villages and did not approach the voters residing there he is himself to blame, and no grievance can be made of it. This issue is, therefore, decided against the petitioner.

Issue No. 5.—The evidence of P. W. 6 (Shri Nand Lal Sinha) who was chief Electoral Officer at the time of the election shows that most of the women voters were entered in the draft Electoral Roll by their status *i. e.* the wives or daughters of so and so and not by their names. The Election Commission decided that only those women voters whose names could be ascertained were to remain on the Electoral Roll as finally published. So, immediate steps were taken to make corrections and two lists were prepared. One list contained the names of the women voters whose names could be ascertained. The other list related to these women voters whose names could not be ascertained and who were to be considered to have been removed from the draft Electoral Roll. These two lists were added to the draft Electoral Roll as Addenda and corrigenda. But in spite of the steps taken to correct the draft Electoral Roll, some women voters entered in the draft Electoral Roll by their status continued in the Electoral Roll as finally published and it was decided that these women were to be allowed to vote at the election. The marked copies of the Electoral Rolls for Deo and Nagari have been placed on the record. But the petitioner has not been able to point out any case of a woman of Deo village whose name has been removed from the Electoral Roll, being allowed to vote. The petitioner has examined his polling agents, namely P. W. 5 (Bihari Singh), and P. W. 7 (Hansraj Singh), who were his polling agents at Nagari polling booth to prove that about 50 women voters who had come to vote were refused ballot papers by the Presiding Officer. He has also examined P. W. 8 (Fulleshwar Devi), P. W. 9 (Ramsamaria Devi) and P. W. 10 (Amarudhia Devi) to prove that they had been to Nagari Polling Booth to cast their votes but were refused ballot papers.

The corrections made in the Electoral Roll show that serial No. 952 in respect of Ramsamaria Devi and serial No. 1046 in respect of Fulleshwar Devi were removed from the Electoral Roll and so these two persons were rightly refused ballot papers. Serial No. 1074 in respect of Amarudhia continued in the Electoral Roll as wife of Shyama Pathak in spite of the correction made in it. Her evidence shows that she had demanded ballot paper in the name of Amarudhia. But the Electoral Roll shows that she is entered there as wife of Shyama Pathak, and not by her name, Amarudhia. So, when the Presiding Officer refused to give her ballot paper which she demanded in her name, Amarudhia, and not in her capacity as wife of Shyama Pathak, there is nothing surprising in it. We also feel doubt that she had gone to cast her vote as is being claimed by her. Her evidence shows that voting at Nagri Booth had continued for 5 or 6 days. When it is being claimed that the Presiding officer had wrongly refused her ballot paper, it looks rather surprising that she or those who were anxious to secure her vote should have sat quiet and should not have tried to bring to the notice of the Presiding Officer that he was committing mistake in refusing her a ballot paper. Even if it be conceded that she was wrongly refused a ballot paper this single instance of wrong exercise of discretion on the part of the Presiding Officer could not affect the result of the election.

It has been also argued that those women voters who continued to be described in the Final Electoral Roll by their Status were not in law entitled to vote and the Presiding Officer has acted illegally in allowing them to vote. This contention is being based on definition of the term 'Elector' as given in Section 2(1) (c) of the Representation of the People Act, 1951. The term 'Elector' has been defined as follows :—

'Elector', in relation to a constituency, means a person whose name is for the time being entered in the Electoral Roll of that constituency "So it has been contended that when these women voters were not entered in the Electoral Roll by their names they were not competent to vote. But we have also to look to section 62 of the Act, Clause 1 of which lays down that every person who is for the time being entered in the Electoral Roll of any constituency shall be entitled to vote in that constituency. In this section there is no restriction that a person should be entered in the Electoral in his or her name in order to be entitled to vote. Petitioner's witness, Amarudhla continued in the Electoral Roll as Jowje Shyama Pathak. There is no doubt that the Jowje Shyama Pathak is a person and as such she is entitled to vote. We also think that it can be hardly contested that Jowje Shyama Pathak is a name as contemplated in the definition of the term 'Elector'. It cannot be disputed that Mrs. Shyama Pathak would be a name and there is no reason why Jowje Shyama Pathak should not be considered to be a name. So, we are unable to accept the contention of the petitioner that women voters entitled in the Electoral Roll as Jowje such and such should not have been allowed to vote.

This issue is, therefore, decided against the petitioner.

Issues Nos. 6 and 7.—In view of our findings on issues Nos. 2, 3, 4 and 5 we decide these two issues against the petitioner.

Issue No. 1.—There is no dispute that Ramekbal Singh and Mahadeo Ram Dhobi had filed nomination papers and their nomination papers had been accepted by the Returning Officer. There is also no dispute that these two persons, subsequently, withdrew from contest within the time allowed for taking this step. The contention of Respondent No. 1 is that these two persons also should have been implicated and, in their absence, the petition filed for setting aside his election is not maintainable. But in view of our decision on the other issues framed in the case, we do not consider it necessary to decide this issue.

The result, therefore, is that the Election petition fails.

ORDER

The election petition be dismissed. The petitioner shall bear his own costs and shall pay Rs. 250/- (Two hundred and fifty) as cost to Respondent No. 1

HIGH COURT, PATNA;

(Sd.) BASU PRASAD, *Chairman*.

The 21st April, 1953.

(Sd.) HARGOVIND PRASAD SINHA, *Member*.

(Sd.) ADITYA NARAYAN LAL, *Member*.

[No. 19/143/52-Elec. III/5937.]

By Order,

P. R. KRISHNAMURTHY,

Asst. Secy.

